

## IN THE SUPREME COURT OF THE STATE OF MONTANA

PR 06-0120

FILED

DEC 17 2008

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

ORDER

DISQUALIFICATION OF DISTRICT COURT  
JUDGES

Lewis Price III (Price) has filed a motion and brief in support to disqualify the Honorable Blair Jones for cause from presiding over Price's post-conviction proceedings.

In his post-conviction proceeding, Price contends that he was excluded from several in-chamber meetings in violation of the "Confrontation Clause of the Sixth Amendment." Price argues that the only three persons present for the meetings were Judge Jones, the County Attorney and Price's counsel, Robert Eddleman. Since the County Attorney is now deceased and Price is asserting an ineffective assistance of counsel claim against Eddleman, Price contends that the only uninterested source of information as to what transpired is Judge Jones. Accordingly, since Price anticipates that he will have to call Judge Jones as a witness, he asserts that the Judge should be disqualified from presiding.

Since Price does not contend that there is "personal bias or prejudice" on behalf of Judge Jones, Price's motion to disqualify does not meet the specific statutory prerequisite for disqualification for cause. Section 3-1-805(1), MCA.

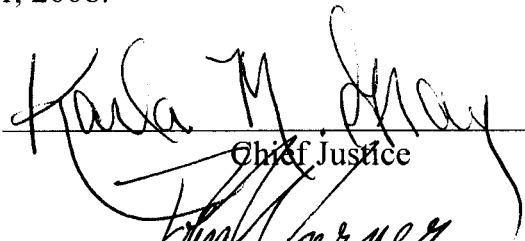
Accordingly,


IT IS HEREBY ORDERED THAT:

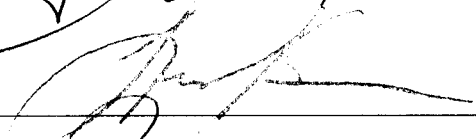
1. Price's motion to disqualify the Honorable Blair Jones is DENIED.
2. The Clerk of this Court is directed to mail a true copy of this order to counsel for

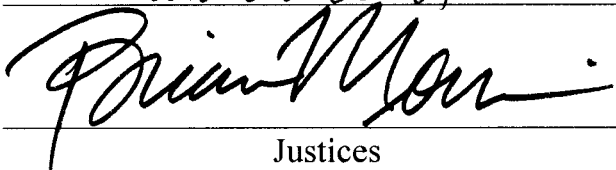
Petitioner, the Honorable Blair Jones and the Clerk of the District Court of the Twenty-Second Judicial District, Carbon County, Montana, Cause No. DV-08-174.

DATED this 16th day of December, 2008.

  
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Chief Justice

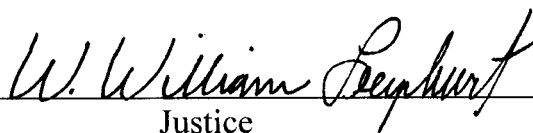
  
\_\_\_\_\_  
Justice

  
\_\_\_\_\_  
Justice

  
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Justices

Justice W. William Leaphart, dissenting.

I dissent. Under the unique circumstances of this case, I would grant the motion. Although Price does not allege bias or prejudice of the presiding judge, he does allege that he will be prejudiced by the circumstances; that is, without the unbiased testimony of the judge, he will be unable to develop a record of what transpired at the in-camera meetings which are the subject of his petition. Although Price can call his former defense counsel as a witness, defense counsel will not be objective and Price will have no means by which to effectively cross-examine counsel.

  
Justice